

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

v.

No. 99-4618

DUNNIE G. SMITH,
Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of North Carolina, at Greenville.
Terrence W. Boyle, Chief District Judge.
(CR-98-57-BO)

Submitted: March 9, 2000

Decided: March 16, 2000

Before WILKINS, TRAXLER, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Robert J. McAfee, MCCOTTER, MCAFEE & ASHTON, P.L.L.C.,
New Bern, North Carolina, for Appellant. Janice McKenzie Cole,
United States Attorney, Anne M. Hayes, Assistant United States
Attorney, Dennis M. Duffy, Assistant United States Attorney,
Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Dunnie G. Smith appeals the district court's judgment imposing a six month sentence after a guilty plea for operating a vessel on the high seas under the influence of alcohol and drugs in violation of 46 U.S.C.A. § 2302(c)(2) (West Supp. 1999). Finding no error, we affirm.

Because there is no sentencing guideline expressly applicable to this crime, the district court calculated Smith's sentencing range of zero to six months using the most closely analogous offense guideline, U.S. Sentencing Guidelines Manual § 2D2.1 (1998). See USSG § 2X5.1. Smith did not file an objection to the presentence report or object to the calculation at sentencing. Our review, therefore, is limited to plain error. See Fed. R. Crim. P. 52(b); United States v. Olano, 507 U.S. 725, 732-35 (1993).

We have held that a sentence imposed within a correctly calculated guideline range is not subject to appellate review. See United States v. Jones, 18 F.3d 1145, 1151 (4th Cir. 1994). Because we find that the district court sentenced Smith within a correctly calculated guideline range, Smith's claim is not reviewable. We therefore affirm Smith's conviction and sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED